IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH NOVEMBER 2007 / 8TH AGRAHAYANA 1929

Crl.MC.No. 3571 of 2007()

CC.658/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER:

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1. A.P.AYISHA, AGED 70 YEARS,
   W/O KAYIKKARAN MOIDEEN, ANACHARAPPAD HOUSE,
   NEAR THALAKKAL PALLI, P.O.PUTHIYANGADI.

2. A.P.KHADEEJA, AGED 45 YEARS,
   D/O KAYIKKARAN MOIDEEN,
   NEAR THALAKKAL PALLI, P.O.PUTHIYANGADI.

3. A.P.ASMA, AGED 38 YEARS,
   W/O MUHAMMADALI, NEAR THALAKKAL PALLI,
   P.O.PUTHIYANGADI.

4. A.P.IRAHIM KUTTY, AGED 34 YEARS,
   S/O KAKYIKKARAN MOIDEEN,
   NEAR THALAKKAL PALLI, P.O.PUTHIYANGADI.

5. A.P.SALAM, S/O KAYIKKARAN MOIDEEN,
   NEAR THALAKKAL PALLI, P.O.PUTHIYANGADI.

6. A.P.MUBASHEERA, D/O KAYIKKARAN MOIDEEN,
   NEAR THALAKKAL PALLI, P.O.PUTHIYANGADI.

BY ADV. SRI.A.K.ABDUL AZEEZ

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY ITS
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. VADAKKE MUKKUVACHERRY SAKKEENA,
   D/O ERAMULLAN, NEAR THANGAL PALLI POST OFFICE,
   KANNUR DISTRICT.

BY P.P. SRI.M.S. BREEZ.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3571 of 2007

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Dated this the 29th day of November, 2007

O R D E R

The petitioners are accused 2 to 7 in a prosecution launched on the basis of a private complaint filed by the second respondent. She is the wife of the first accused, who is not a party to this proceedings. The petitioners (A2 to A7) are the relatives of the husband (A1) of the respondent. Cognizance was taken by the learned Magistrate of the offence punishable under Section 498A I.P.C. against all the seven accused persons. The petitioners have not appeared before the learned Magistrate.

2. The petitioners have now come before this Court with a prayer that powers under Section 482 Cr.P.C. may be invoked to quash the proceedings against them.

3. What is the reason? The learned counsel for the petitioners raises two contentions. First of all it is contended that the allegations are not true and are made with vexatious intent.

The question as to whether the allegations are true or false cannot obviously be decided by this Court at this stage with the available inputs and invoking the powers under Section 482 Cr.P.C. It is for the petitioners to urge such contentions before the learned Magistrate and claim discharge under Section 245(2) or 245(1) Cr.P.C. or acquittal at later stages. On the contention that the allegations are not true and are incorrect, the powers under section 482 Cr.P.C. cannot be invoked to quash the proceedings.

4. Secondly the learned counsel contends that the complaint in so far as it relates to the petitioners is barred by limitation under Chapter XXXVI of the Cr.P.C. The crux of the contention is that under Section 468(2)(c), the complaint regarding an offence under Section 498A I.P.C., which is punishable with a maximum sentence of three years, must have been filed within three years of the date of the offence. There can be no dispute on that proposition of law.

5. I have been taken through the averments in the complaint, which clearly show that the alleged matrimonial cruelty continued till 3.10.2003, on which day, because of the alleged matrimonial cruelty

the complainant was compelled to leave the marital home and proceed to her parental home. That means, the complaint should have been filed within three years of that date , i.e. 3.10.2003. The complaint admittedly has been filed in May, 2006 (complaint bears the date 27.5.2006). In these circumstances the plea of limitation cannot also be accepted. The plea of limitation has to be considered on the basis of the averments raised in the complaint at this stage. I do not, in these circumstances, find any valid reasons to invoke the extra ordinary inherent jurisdiction under Section 482 Cr.P.C. and quash the proceedings against the petitioners.

6. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. The petitioners are willing to surrender before the learned Magistrate. But they apprehend that when they appear and apply for bail their applications may not be considered by the learned Magistrate. They pray that appropriate directions may be issued under Section 438 and/or 482 Cr.P.C.

7. It is certainly for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate the circumstances

under which they could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the applications for bail to be filed by the petitioners when they surrender before the learned Magistrate, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

8. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Magistrate and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

9. The learned counsel for the petitioners submits that if unnecessary insistence were made on the personal presence of the petitioners, it will cause great hardship and prejudice to them. If the

court ritualistically insist on the personal presence of the accused, who include a 70 year old lady, the mother-in-law of the complainant (A2) it will cause difficulties for the petitioners. The petitioners can apply for exemption and needless to say, their prayer for exemption must be considered by the learned Magistrate on merits and in accordance with law. Personal presence need be insisted only when such appearance is necessary and inevitable for the progress of the case. On all other days an accused can be represented by counsel.

(R. BASANT)
Judge

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